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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,207	12/01/2003	Werner M.A. Grootaert	58209US004	4690

32692 7590 03/18/2005

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EXAMINER

ASINOVSKY, OLGA

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 03/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/725,207

Applicant(s)

GROOTAERT ET AL.

Examiner

Olga Asinovsky

Art Unit

1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/15 & 6/25/2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-10, 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 0829 494 A2=patent family U.S. patent 5,780,552 to Kerbow.

EP 0 829 494 discloses fluoropolymers in particulate form having core/shell structure with functional unit such as nitrile located into the shell segment, page 3, lines 1-7, 9, 25-27, 45-47, 55-56, page 4, lines 10, 28-27, 44-58. The core segment is formed from tetrafluoroethylene. The shell polymer is formed from non-functional fluorinated comonomers including perfluoroalkylvinyl ether (PAVE) and copolymerized functional monomer, page 4, lines 21-25, 44-50. A wide variety of articles can be derived from core/shell particles, page 4, line 55. EP'494 discloses a process for producing fluoropolymer wherein a core of a first fluoropolymer is first polymerized, than a shell of a second fluoropolymer is polymerized, page 3, lines 55-57. The particles of fluoropolymer resin can be produced by aqueous dispersion, suspension polymerization technique, including seed polymerization process, page 3, lines 28-31. Thus, the claimed latex (claim 13) is readable in EP'494. The average particle size is in the range of 10 to 350 nanometer, page 3, line 32. The sell segment comprising non-functional comonomer having the melting point substantially below that of TFE homopolymer is considered of being fluoroelastomer, page 4, lines 46-50.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 11, 15-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al U.S. patent 6,310,141 in view of EP'0 829 494.

EP'494 has been discussed in the paragraph 2 above.

EP' 494 does not clearly disclose monomers comprising bromine atoms, iodine atoms, and combinations thereof. Also, EP'494 does not disclose a curable blend comprising a fluoroplastic and a fluoroelastomer gum comprising a nitrile-containing cure site.

However, the shell segment is a fluoroelastomer that is within the scope of a fluoroelastomer gum.

Chen discloses cured, latex-blended composition comprising a fluoroelastomer and a fluoroplastic, and curable core-shell polymers, column 1, lines 60-67, column 2, lines 1-67 and column 3, lines 18-45. The fluoroelastomer may include the reaction product of a cure-site monomer including halogenated monomers such as brominated monomers, iodine-containing monomers, and combinations thereof, column 2, lines 19-30 and claim 9 at column 13, for the present claims 11, 21 and 31. The cured composition may be provided in a shaped form, column 2, lines 39-45. A core-shell polymer is a product of a

Art Unit: 1711

fluoroplastic having a melting point of at least 100 C, and a shell fluoroelastomer having a melting point less than 100 C, column 3, lines 18-35. The fluoroelastomer is a fluoroelastomer gum, column 3, line 55.

Chen does not disclose a nitrogen-containing cure site component.

In light of the benefit of the nitrile-containing cure site component in EP'494 for increasing adhesive properties with other material, it would have been obvious to one of ordinary skill in the art to employ a core-shell copolymer having functional nitrile comonomer in the shell segment as disclosed in EP'494 into cured, latex-blended compositions of Chen's invention for the purposes to induce the interaction with other material to achieve an adhesive bond as disclosed by EP'494.

5. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

6. Claims 1-10 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-26 of prior U.S. Patent No. 6,803,425. This is a double patenting rejection.

7. Fluoropolymers having pendant imide structures in claims 1-26, especially claim 24 of Patent'425 is readable in the present claims. The pendant imide groups are within the scope of nitrile groups. The pendant imide groups are attached directly to a fluoropolymer backbone, claim 3 of Patent'425.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The closest references to EP 0 829 494 that includes family patent 5,780,552 and Chen patent 6,310,141 have been discussed above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Olga Asinovsky whose telephone number is 571-272-1066. The examiner can normally be reached on 9:00 to 5:30 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1711

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

O.A.
March 13, 2005

Olga Asinovsky
Examiner
Art Unit 1711


James J. Seidleck
Supervisory Patent Examiner
Technology Center 1700